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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/809,009 | 03/16/2001 | Jean-Marc Ascione | 05725.0634-00 | 5103 |

22852 7590 03/29/2006

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| EXAMINER |
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ELHILO, EISA B

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| ART UNIT | PAPER NUMBER |
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1751

DATE MAILED: 03/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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|---|------------------------|---------------------|--|
| Response to Rule 312 Communication | Application No. | Applicant(s) | |
| | 09/809,009 | ASCIONE ET AL. | |
| | Examiner | Art Unit | |
| | Eisa B. Elhilo | 1751 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☒ The amendment filed on 17 March 2006 under 37 CFR 1.312 has been considered, and has been:

a) ☒ entered.

b) ☐ entered as directed to matters of form not affecting the scope of the invention.

c) ☐ disapproved because the amendment was filed after the payment of the issue fee.

Any amendment filed after the date the issue fee is paid must be accompanied by a petition under 37 CFR 1.313(c)(1) and the required fee to withdraw the application from issue.

d) ☐ disapproved. See explanation below.

e) ☐ entered in part. See explanation below.

With respect to Applicant's comments on the Statement of Reasons for Allowance, the Examiner would like to point out that Evidence of unexpected properties may be in the form of a direct or indirect comparison of the claimed invention with the closest prior art which is commensurate in scope with the claims. See In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980) and MPEP § 716.02(d) - § 716.02(e). See In re Blondel, 499 F.2d 1311, 1317, 182 USPQ 294,298 (CCPA 1974) and In re Fouche, 439 F.2d 1237, 1241-42, 169 USPQ 429, 433(CCPA 1971) for examples of cases where indirect comparative testing was found sufficient to rebut a prima facie case of obviousness. In this case the US. Patent No. 5,989,295 is the closest prior art that used in all office actions to establish prima facie case of obviousness. Accordingly, the Statement of Reasons of Allowance is correct.

Eisa Elhilo

Eisa Elhilo
Primary Examiner
Art Unit 1751

3/24/06